IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

Asha Ram & another Vs. Shadi Ram & another

S.B. CIVIL FIRST APPEAL No.150/1990 against the judgment & decree dated 21.2.1990 passed by the ADJ, Kishangarhbas in Civil Suit No.22/1988.

Date of Judgment :: December 6, 2006

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Rahul Kamwar for the plaintiffs-appellants.
None present for defendants-respondents.

BY THE COURT:

1. Heard learned counsel for the appellants. This appeal U/s.96 of CPC is directed against the judgment and decree of learned ADJ, Kishangarhbas rejecting Civil Suit No.22/1988 by its judgment dated 21.2.1990.

2. The suit was filed by the plaintiffs Asha Ram and Baley Singh claiming specific performance of the agreement for sale of agricultural land bearing khasra No.321 -admeasuring 10 biswa in Gangapuri, Tehsil Kishangarh on the ground that the defendant Shadi Ram had agreed to sell the said agricultural land of 10 biswa to the plaintiffs under the said agreement for a sum of Rs.16,000/- against which an advance of Rs.15,000/- was

paid on 18.10.1987 and the plaintiff was ready and willing to pay the balance amount of Rs.1,000/- for execution of registered sale deed in his favour.

3. The defendants contested the suit by filing written statement before the learned trial court in which it was submitted that the said agricultural land was already in possession of defendant No.2 Moti Ram to whom the defendant No.1 Shadi Ram had already agreed to sell the said agricultural land vide agreement Ex.A.1 dated 10.7.1987 and a registered sale deed was later on executed Ex.1 dated 12.4.1988. The defendant further claimed that there was no agreement for sale executed in favour of the plaintiff as claimed and during that period he was suffering from mental disease and on account of improper mental balance if any such agreement could be said to have been executed, the same was non est and void as it was executed without free consent.

4. The learned trial court on the basis of pleadings framed various issues and issue No.1 to the extent necessary for disposal of the present appeal is reproduced hereunder:-

> Issue No.1 – Whether the defendant No.1 had agreed to sell his agricultural land measuring 10 biswa in Araji khasra No.321 at Gangapuri for a sum of Rs.16,000/- on

18.10.1987 to the plaintiff and on the same day had received a sum of Rs.15,000/- as an advance and upon which the possession of the land was also handed over to the plaintiffs and an agreement was executed on 18.10.1987 ?

5. The learned trial court while deciding issue No.1 held that plaintiffs had failed to prove the said agreement to sale Ex.1 dated 18.10.1987 as the learned trial court found that there was variations in the statements of various witnesses who were either attesting witnesses or even Dw.1 Shadi Ram, the alleged seller, the learned trial court, therefore, dismissed the suit of the plaintiffs holding that the sale of land by defendant No.1 in favour of defendant No.2 Moti Ram under registered sale deed dated 12.4.1988 Ex.1 was a valid sale and there was no agreement in favour of the plaintiffs.

6. Learned counsel for the appellants strenuously urged before this Court that the learned trial court has seriously erred in holding that the agreement for sale in his favour dated 18.10.1987 was not proved. The alleged circumstance of mental disease of defendant No.1 Shadi Ram is not correct because during the contemporary period the same person Shadi Ram has not only said to have executed the agreement for sale in favour of defendant No.2 Moti Ram but also got registered the sale deed

executed in his favour. He also submitted that the learned trial court even while rejecting the suit erred in not awarding damages or even refund of the advance sum of Rs.15,000/- paid to the seller defendant No.1 Shadi Ram under the said agreement. He read the statements of various witnesses to strengthen his submission that there was no justification for not treating the said agreement to sell in favour of the plaintiff as proved.

7. Nobody represents the defendant- respondents despite service, in this Court and, therefore, ex-parte arguments were heard.

8. Having considered the submissions of the learned counsel for the appellants and upon perusal of the pleadings and relevant evidence which has come on record, this Court is of the opinion that while finding of the learned trial court that suit for specific performance could not be decreed in view of the agreement in favour of the defendant No.2 prior in point of time than one in favour of the plaintiff namely dated 10.7.1987 resulting into registered sale deed in favour of the defendant No.2 Moti Ram on 12.4.1988, yet was appears to be no justification for holding that agreement in favour of the plaintiff Ex.1 dated 18.10.1987 was not a document well proved before the learned trial court. The finding of the learned trial court on issue No.1, therefore, is not

sustainable. The inconsistencies alleged to be there in the statements of various witnesses which impelled the learned trial court to arrive at the finding that the said agreement was not proved do not appear to this Court to be of substantial nature. Therefore, the finding on issue No.1 cannot be sustained.

9. At the same time, this Court is of the opinion that since the defendant No.2 Moti Ram was in possession of the land in dispute even 10 years prior to the agreement in his favour vide Ex.A.1 dated 18.7.1987 and registered sale deed, the said sale in his favour does not deserve to be disturbed particularly after a long lapse of period at this stage, therefore, it appears to this Court that it would meet the interest of justice if the defendant-respondents are directed to refund the amount of Rs.15,000/- paid by the plaintiff to the defendant No.1 i.e. the sum of Rs.15,000/- on 18.10.1987 under the agreement Ex.1 and also damages as stipulated in that agreement of the sum of Rs.10,000/- for not executing the final sale deed in favour of the plaintiff.

10. Accordingly this appeal is partly allowed and the finding on issue No.1 is modified to the extent that the defendant-respondents shall be jointly and severally liable to pay the said amount of Rs.25,000/- to the plaintiff-appellant Asha Ram. However, the said amount

shall not bear any interest. The said amount be paid within a period of six months from today. The rest of the order of the learned trial court is however maintained.

11. The appeal is partly allowed. No order as to costs.

(Dr.VINEET KOTHARI),J.

VS/